IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1697 OF 2006
IN
WRIT PETITION NO.3799 OF 2003

State of Maharashtra Petitioner
versus
Sanskrit Vidya Mandir Respondent

Shri A.A.Kumbhakoni, Associate Advocate General with Shri A.H.Palekar, AGP for petitioner State.

Shri R.G.Ketkar for respondents 2 and 3.

Shri Ashok Tejond i/by P.B.Saligram for respondent no.1.

CORAM : S.C.DHARMADHIKARI AND
MRS.ROSHAN DALVI, JJ.

DATE : 18th September 2006

PC :

1. This Civil Application is by original respondents 1 to 3 in Writ Petition No.3799 of 2003.

2. This writ petition was instituted by first respondent in this Court seeking a direction to respondents 1 to 5 to the writ petition to remove the encroachments of slums and others from land bearing Survey Nos.75 and 80, CTS Nos.2190 and

2191, Parvati, Pune by taking appropriate action under section 50 of the Maharashtra Land Revenue Code ("MLRC" for short) or otherwise.

3. This writ petition was heard with another Writ Petition No.5594 of 2004 which was filed by Slum Dwellers on these plots seeking protection of the amended provisions of Maharashtra Slum Areas, Improvement and Clearances Act, 1971.

4. These writ petitions along with connected Civil Applications were heard by a Division Bench to which one of us (S.C.Dharmadhikari, J.) was a party. By an order dated 9th December 2004, after hearing both sides, the writ petitions were disposed of and we directed that 38 slum dwellers who are held entitled for Photo Passes, be relocated in terms of the above Act and after removing the hutments to hand over possession of 615 sq.mtrs. of land from the above survey numbers to the first respondent-original petitioners.

5. It appears that the order dated 9th December 2004 could not be complied with and that is how the first respondent in this Civil Application has preferred a contempt petition in this Court.

6. The present Civil Application is by the original respondents 1 to 3 namely State of Maharashtra, Collector-Pune and Tahsildar-Pune for modification and/or recall of the order passed on 9th December 2004 in the above writ petitions. Since the earlier Division Bench cannot be constituted, the Hon'ble Acting Chief Justice placed the matter before a specially constituted bench.

7. It is pertinent to note that no application is filed insofar as the order passed on Writ Petition No.5594 of 2004. In other words, neither the first respondent-original petitioner nor the State Government and Pune Municipal Corporation ("PMC" for short) dispute that eligible slum dwellers have to be relocated in accordance with the rehabilitation policy framed by the State Government.

8. The question raised before us is whether the first respondent Trust is entitled to an area admeasuring 3,136 sq.mtrs. and whether it can be allotted the entire area or not? Similarly how the direction of this court to rehabilitate the eligible slum dwellers can be complied with?

9. Although the civil application proceeds on the basis that the order needs to be recalled or modified, ultimately, Shri Kumbhakoni - learned Associate Advocate General restricted the prayers therein to consideration of the application of first respondent for renewal of the lease in it's favour. He also, at the same time, submitted that the State Government would stand by the commitment to rehabilitate the eligible slum dwellers. For that purpose Shri Kumbhakoni had sought time from us to convene a meeting of all concerned so that a solution is found out to above problem.

10. After series of meetings and negotiations between all concerned, the State and the Collector so also the Slum Rehabilitation Authority ("SRA" for short) which is recently established for Pune and Pimpri-Chinchwad Municipal Limits, have agreed before us, that the eligible slum dwellers on the above CTS numbers, would be relocated and rehabilitated at the first available opportunity and for that purpose they seek time of two years. The understanding is also that the Collector, Pune would renew the lease in respect of land in question in favour of

first respondent trust for further period, as is permissible under the Maharashtra Land Revenue Code and Maharashtra Disposal of Land Regulations, 1971 so also applicable policy. The SRA which is established for Pune and Pimpri-Chinchwad Municipal Limits has undertaken that it will relocate and rehabilitate the eligible slum dwellers within the above period. The entire responsibility would be taken over by the State as also the SRA and PMC would not be required to part with any land or earmark any portion for the same.

11. The above agreement was placed on record before us on the last occasion. The Minutes signed by the Collector Pune and agreed to by others and tendered as above, are marked "X" for identification. The Collector as also the SRA have entered into correspondence with each other and a copy of the letter dated 16th September 2006 addressed by the competent authority of SRA for Pune and Pimpri-Chinchwad Municipal Limits to the Collector of Pune, is also placed on record. The same is marked "X-1" for identification.

12. The only plea raised by the first respondent trust is that the trust is deprived of its use

and enjoyment of the entire portion leased to it. The time of two years, therefore, should not be granted and a lesser period be provided for the relocation of eligible slum dwellers.

13. The order passed by this Court on 9th December 2004 is clear inasmuch as the State government is directed to take steps to relocate 38 eligible slum dwellers residing in the slums and hutments on the portion admeasuring 615 sq.mtrs.. The balance portion is already handed over to first respondent trust. The encroachments and hutments have to be removed and the site cleared after the above relocation is done. In our view, such a work is time consuming and it would not be appropriate to straight way set a time limit for the same. In the minutes tendered, no time limit was set. Therefore, we adjourned the matter. Now the SRA for Pune and Pimpri-Chinchwad Municipal Limits having set a time limit on its own, it would be appropriate if time, as prayed therein, is granted. However, we had earlier issued a direction that the rehabilitation be done within a period of Nine Months (9) from our order passed on 9th December 2004. That period now stands extended by a period of two years from today. We, therefore,

direct that no further extension will be granted and the work of relocation and clearance of site shall be completed in this period failing which it would be open for the original petitioners to initiate such proceedings as are permissible in law for breach and violation of this direction.

14. In the light of the agreement arrived at between all concerned including SRA and parties having agreed to a renewal of the lease for a further period as is permissible in law, in our view, no useful purpose will be served by keeping Contempt Petition No.339 of 2005 pending on file of this Court. The said contempt petition and present civil application are disposed of in the above terms. Since an order in terms of the agreement recorded in the Minutes is being passed, we accept all assurances and undertakings therein. Additionally, we have issued directions with regard to renewal of lease and relocation of slums as above.

15. It is common ground that first respondent, in addition to its Application for renewal of the lease, has also applied for permission to utilise 15% of the total area of the plot i.e. 3,136 sq.mtrs. for commercial use. We are informed

that the area to the extent of 15% would be utilised for establishing an extension counter of a Nationalised/Co-operative Bank. Barring this, no other commercial user is proposed. In such circumstances, the Collector shall consider both applications and pass appropriate orders thereon in accordance with law bearing in mind the fact that the benefit of the order passed by this Court on 9th December 2004, could not be extended to the first respondent till date and further time of two years is granted for rehabilitation and relocation of the slum dwellers. The Collector to pass appropriate orders within a period of twelve weeks from today.

16. It is clarified that all encroachments and structures not entitled to statutory protection, shall be liable to be removed by initiating such proceedings as are permissible in law.

17. We record our appreciation for the efforts undertaken by Shri Kumbhakoni, learned Associate Advocate General.

(S.C.DHARMADHIKARI, J.)

(MRS.ROSHAN DALVI, J.)